Supreme Court, U.S.
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No. _____

**IN THE**

**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1992

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JACQUELINE M. ROBNETT,

Petitioner,

Appeal
No. A055269

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Solano County
Superior Ct.
C29594

Respondent.

00000000

PETITION FOR WRIT OF CERTIORARI TO THE
STATE OF CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT, DIVISION TWO

**PETITION FOR WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED FOR REVIEW

1. Can the conviction of defendant/ petitioner be upheld when the State of California Superior Court tried defendant/petitioner, over her express objection, in a county in which she does not reside, before a jury who were not her peers, which place of trial is in contravention of California Statutes and the United States constitution, Amendment VI "..public trial ..[in] the State and district.. which district shall have been previously ascertained by law.."?

2. Is the Due Process Clause of the Fourteenth Amendment of the United States constitution satisfied by an appellate opinion which: (1) is factually irreconcilable with the trial judge's observations and instructional rulings; (2) is based on a line of reasoning which was never remotely adopted by the trial judge or advanced by the

Attorney General.

3. California Revenue and Taxation Code, Section 19407, which mandates defendant/ petitioner's venue, provides that, in a prosecution for failure to file state income tax returns, venue properly lies in the county wherein is located the taxpayer's residence or principal place of business. (1992 Ed.). Does a person who is employed as a rank-and-file wage earner, and who has no other source of income, have "a principal place of business" for tax purposes?

## LIST OF ALL PARTIES TO THE PROCEEDING

Jacqueline May Robnett,

Defendant and Petitioner

The People of the State of California,

Plaintiff and Respondent

The Superior Court of the State of California, in and for the County of Solano

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## STATEMENT OF JURISDICTION

Petitioner seeks review of the opinion of the Court Of Appeal Of The State Of California which was filed August 26, 1992.

Petition for rehearing in that court was summarily denied on September 15, 1992.

Petition For Review of the California Appeals Court opinion was denied by the California Supreme Court on November 19, 1992.

Jurisdiction of the United States Supreme Court for this Petition for Writ of Certiorari is granted by U.S. Supreme Court Rules: Rule 10.1(b), (time) Rule 13.1, and 28 USC §1257.

The United States Constitutional provisions upon which petitioner relies are: **Amendment V:** No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in

the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**Amendment VI:** In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusations; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor,

and to have the assistance of counsel for his defense."

**Amendment XIV:** Citizenship: "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of its laws.

## STATEMENT OF THE CASE

Appellant was arraigned in the State of California Superior Court for the County of Solano on February 14, 1991 on two counts of California Revenue and Taxation Code §19406, and plead "not guilty" R.T. p. 2. The court appointed Monica Lynch counsel, R.T. p. 5.

On April 29, 1991 petitioner filed a Motion in the Solano County Superior Court To Set Aside for lack of venue jurisdiction, see Appendix, p.16.

At the end of the hearing, said motion was denied, R.T. pp. 3-5, Appendix, p 22.

On May 10, 1991, petitioner filed a Petition For Writ Of Prohibition And Request For Stay Of Trial [based on Solano County's lack of venue jurisdiction] in the Court of Appeal Of The State Of California for the First Appellate District.

In the Petition for Writ Of Prohibition, Counsel raises the issue of the U.S. consti-

tution, Article III, section 2 and Amendment VI, at page 10 of said petition.

> "Article III, section 2 of the United States Constitution requires that criminal trials 'shall be held in the State where the said crimes shall have been committed,' a safeguard reinforced by the command of the Sixth Amendment that the criminal trial shall be before an impartial jury of 'the State and district wherein the crime shall have been committed.' (Travis v. United States 364 U.S. 631, 634.)" Defendant's Petition for Writ of Prohibition, p. 10.

On May 13, 1991 the petition was summarily denied by the court without comment.

On May 22, 1991, in the State of California Supreme Court, petitioner filed a Petition For Review And Request For Stay After The Unpublished Decision Of The Court Of Appeal, First Appellate District, Division Two, Summarily Denying The Petition For Writ Of Prohibition.

U.S. constitutional issues are raised

under "Necessity For Review" at p. 7 (Article III, sec. 2); pp. 7 and 9 (Amendment VI); and p. 9 (Amendment XIV).

On June 26, 1991 the State of California Supreme Court In Bank denied the Petition for Review without comment.

Petitioner's trial commenced on August 13, 1991. At the end of the trial, petitioner's counsel, Monica Lynch requested the presiding judge, Honorable Michael L. McInnis, to instruct the jury to render a decision on the venue jurisdiction issue, see excerpt from Reporter's Transcript, Appendix, pp. 26 - 38.

Counsel references the United States constitution at R.T. p. 141, Appendix p. 9.

After lengthy discussion among the judge, defense counsel, and the prosecutor, the Honorable Michael McInnis did not present an instruction on venue to the jury, R.T. pp. 141 - 144, and 151 - 155, Appendix, pp 34 - 38.

The Court never alludes to the United States constitution.

On August 14, 1991 the jury found petitioner guilty on both counts of California R & T §19406 (Failure to file tax returns with intent to evade a tax).

On October 3, 1991, petitioner filed her Notice of Appeal and Request For Appointment Of Counsel On Appeal.

On December 23, 1991, Petitioner filed for and was granted 30 days additional time in which to file her opening brief.

Petitioner filed her opening brief in the State of California Court of Appeal on February 25, 1992. The opening brief raised no Federal constitutional issues in regard to the trial court's venue jurisdiction.
The First Appellate District, Division Two of the Court Of Appeal Of The State of California affirmed the judgment against her on August 26, 1992, see decision in Appendix, p. 11.

Petitioner filed a timely Petition For Rehearing on August 31, 1992. The petition was summarily denied on September 15, 1992.

Petitioner's filed a timely "Petition For Review" in the Supreme Court of the State of California on September 26, 1992. Review was denied by that court on November 19, 1992, Appendix, p. 12.

## ARGUMENT

The State of California Court of Appeal violated petitioner's constitutional guarantee of due process under Amendment V, made applicable to the states by Amendment XIV, and her right to a trial in a district previously ascertained by law under Amendment VI, when it assumed that petitioner had a residence in Solano County - a fact not in evidence. The court erroneously decided that petitioner's post office box rented in Solano County is her residence for tax purposes. The court commits further error by not ruling on the issue of whether petitioner has a principal place of business within Solano County for the purposes of California Revenue and Taxation Code, section 19407.

Statement of the facts.

On November 14, 1990, State of California Municipal Judge, F. Paul Dacey, issued an arrest warrant on petitioner alleging her violation of 2 counts of California Revenue and Taxation Code, (R. & T. Code) Section 19401 (a).[1]



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[1] California Revenue and Taxation Code, Section 19401 (a): "Failure to file return or making false return; Penalty; Misdemeanor - Any person who does any of the following is liable for a penalty of not more than five thousand dollars ($5,000):

(a) With or without intent to evade any requirement of this part or any lawful requirement of the Franchise Tax Board under this part, fails to file any return or to supply any information required under this part, or who, with or without such intent, makes, renders, signs, or verifies any false or fraudulent return or statement, or supplies any false or fraudulent information."

The arrest warrant also included two violations of R. & T. Code Section 19406.[2]

On or about December 13, 1990, petitioner was arrested in her Napa County domicile by Sacramento County District Police who transported her to the Solano County Jail.

On January 22, 1991 a Preliminary Hearing in Solano County was conducted and petitioner was held to answer on the



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[2] California Revenue and Taxation Code, Section 19406:

Return or information unfiled, false or fraudulent, intent to evade tax,; punishment - Any person who, within the time required by or under the provisions of this part, willfully fails to file any return or to supply any information with intent to evade a tax imposed by this part, or who, willfully and with like intent, makes, renders, signs or verifies any false or fraudulent return or statement or supplies any false or fraudulent information is punishable by imprisonment in the county jail not to exceed one year, or in the state prison or by fine of not more than 20,000 or both fine and imprisonment at the discretion of the court.

violations of law charged in the arrest warrant.

On cross-examination by MS. Brewer, representing the Solano County District Attorney's office, Brewer asked petitioner if the address listed for her was in Solano County. Petitioner testified the address was in Napa county, R.T, p.66.

Brewer then asked petitioner if she had a post office box in Solano County which petitioner affirmed, R.T. p.66.

Next Brewer asked if petitioner worked at Mare Island Naval Shipyard in Solano County which petitioner also affirmed, R.T. p. 66.

No other evidence was admitted to refute petitioner's testimony that she is a resident of Napa County.

On February 1, 1991 an Information was filed in the Solano County Superior Court charging petitioner with two violations of

R. & T. Code, Section 19406, (Return or information unfiled, false or fraudulent; [with] intent to evade tax., emphasis added). The two charges of R. & T. § 19401 were omitted.

At the arraignment hearing in Solano County Superior Court on February 14, 1991, petitioner plead "not guilty" to the charges and the court appointed Monica Lynch (counsel) to represent her, since petitioner needed assistance of counsel and was without funds.

After becoming familiar with the issues in petitioner's case counsel pointed out that petitioner was within her rights to have the information dismissed in Solano County on the terms of R. & T. Code, section 19407 [3]



[3] R. & T., section 19407 states:

"The place of trial for the offenses enumerated in this chapter [Chapter 23] of this code [California Revenue and Taxation Code] shall be in the county of residence or principal place of business of the defendant or defendants; provided, that if such defendant has no residence or principal place

because petitioner's residence is in Napa County and she was clearly not engaged in any business.

Though a Motion to Set Aside the Information based on venue jurisdiction was timely filed in petitioner's behalf, the Solano County Superior court refused to relinquish jurisdiction, R.T. (April 29, 1991) p.5., App. p. 22. The challenge to Solano County's venue was pursued to the State's highest court. On November 19, 1992 that court denied review of the California Appellate court's ruling, Appendix, p. 12.

Petitioner seeks certiorari by this court of the opinion filed in this case by the State of California Court of Appeals, Appendix, p. 1.



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of business in this State such trial shall be had in the county of Sacramento." (emphasis added)

Argument and authorities.

Because no facts on the record indicated that petitioner's residence was not in Napa County or that petitioner had more than one residence and no magistrate or court had ever alleged that petitioner had a residence in Solano County, petitioner's opening appeal brief addressed only the "principal place of business" aspect of R. & T. Code §19407[4] governing the county in which violations of R. & T. §19406 shall be tried, Opinion, p. 3; Appendix pp. 4, 5.



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[4]Revenue and Taxation Code §19407. Place of trial: The place of trial for the offenses enumerated in this chapter of this code shall be in the county of residence or principal place of business of the defendant or defendants; provided, that if such defendant has no residence or principal place of business in this State, such trial shall be had in the County of Sacramento.

## California Court of Appeal Error No. 1

## THE APPEALS COURT OPINION IMPLIES THAT VENUE JURISDICTION MAY ONLY BE CHALLENGED AT THE ARRAIGNMENT HEARING

> "Venue is a question of fact, and in ruling on that question the magistrate was required to pass on the weight of the evidence and the credibility of witnesses. On subsequent consideration neither this court nor the superior court is permitted to substitute its judgment for that of the magistrate. Where there is "some evidence" to support the magistrate's factual determination of venue, we will not inquire into its sufficiency [Citation.]" California Appeals Court OPINION, p. 4; Appendix pp. 6, 7 (emphasis added)

The court is in error and violates petitioner's right to due process under the United States constitution, Amendment 5 and Amendment XIV.

There is no California statute or regulation governing when venue jurisdiction must be challenged. The controlling California case appears to be People v. Wilson, 106 Cal.App.2d 716; 236 P.2d 9.

> "Jurisdiction over the person of an accused is not affected by the way it is acquired, or the manner by which the accused is brought into court. When a person is illegally incarcerated he must take proper steps in the trial court, before trial, to correct the situation. If he proceeds to trial without objection, as he did here, any invalidity in the proceedings prior to commitment is waived. (In re Tedford, 31 Cal.2d 693, 694 [192 P.2d 3]; People v. Youders, 96 Cal.App.2d 562, 568 [215 P.2d 743]; In re Edwards, 99 Cal.App. 541, 544 [278 P. 910, 290 P. 591]; see cases collected 7 Cal.Jur. p. 906, 851.) This is the rule in practically all jurisdictions. (See cases collected in 96 A.L.R. p. 982.) At this late date the claim of the unlawfulness of the arrest is an immaterial factor so far as the validity of the convictions is concerned." People v. Wilson 106 Cal.App.2d 716, 718-719.

Petitioner followed the established California procedure as set out in Wilson (supra) and challenged the court's venue jurisdiction in a timely manner, see Statement of the Case, supra, pp. 1-5.

California Court of Appeal Error No. 2

THE APPEAL'S COURT REFUSED TO OVERTURN PETITIONER'S CONVICTION BASED ON THE FACT THAT HER JURY WAS DENIED THE OPPORTUNITY TO DECIDE THE VENUE JURISDICTION ISSUE

The Appeals Court refused to recognize the fact that in the State of California, the trier of fact has the right to decide venue.

In so doing the court violated petitioner's right to due process under the United States constitution, Amendment 5 and Amendment XIV, and the right to be tried in a district previously ascertained by law - Amendment VI.

Venue is a question of fact, see People v. Pollock, 26 Cal.App.2d 602, 604 [80 P.2d 106]; Witkin, Cal. Criminal Procedure (1963) Jurisdiction and Venue, §66.

California courts have held that the trier of fact has the right to decide facts of residence.

> "In light of the fact that appellant has failed to cite any authority precluding the trial court from reaching the conclusion it did, ... it appears that whether or not a post office box address is the equivalent of a residence address is a question of fact reserved for the trier of fact." Fenton v. Board of Directors 156 Cal.App.3d 1107, 1116; [203 Cal.Rptr. 388] (June 1984) (emphasis added)

In petitioner's case, the trier of fact was her jury. Counsel pressed the trial court before and after the trial for the venue jurisdiction issue to be submitted to the jury for their decision, see Trial Proceedings August 13, 1991, R.T. p. 155, Appendix 37, 38.

California Court of Appeal Error No. 3

THE COURT OF APPEAL IMPLIES FACTS NOT ON THE RECORD

The Court of Appeal implies, raises, analyzes and rules upon facts (and points of law relating to those facts,) which appellant, the magistrates, the courts, the District Attorney, and the

State Attorney General had never raised at any stage of the proceedings, to wit: (1) defendant/appellant in fact had more than one residence (2) the rental of a post office box is equivalent to maintaining a residence in that county where the post office box is located, Opinion, pp. 4, 5; Appendix, pp.5-8.

The court implies that appellant resided in Solano County because "Defendant also sent tax protest correspondence to the Board in 1984-1985 from an address in Solano County, including numerous affidavits which were notarized there.", Opinion, p.5; Appendix pp. 7, 8.

This act constitutes error on the part of the Appeals Court and violates petitioner's right to due process under the United States constitution, Amendment V and Amendment XIV.

Under ordinary circumstances, when a party changes the theory of his case on

appeal the appellate court is precluded from reviewing the new theory. (6 Witkin, Cal. Procedure (2d ed. 1971) Appeal, §281, p.4269.) This doctrine, known as the "theory of trial," is a well-established rule of appellate practice. (Ernst v. Searle (1933) 218 Cal. 233, 240-241; 22 P.2d 715.) The application of this doctrine is discretionary, however, and several exceptions have developed. One of the recognized exceptions is that a party may elect to change his theory if the issue only involves a question of law. (Barton v. Owen (1977) 71 Cal. App.3d 484 [139 Cal.Rptr. 494].)

There is no rule of law or practice which grants the Appeals court authority to state facts not in evidence.

In this case, the court assumed that because petitioner had corresponded with the California Franchise Tax Board (Board) from an address in Solano County in 1984-1985

that she in fact had a residence in Solano County during the time the crimes were alleged to have been committed and at the time of trial.

The fact was not true. Petitioner moved from Solano County to Napa County in 1986. Petitioner's only residence was in Napa County during the time the alleged crimes occurred and at the time of arraignment and subsequent trial.

The court denied petitioner the opportunity to place this fact on the record. Her petition for rehearing and reconsideration was denied, Appendix p. 11.

California Court of Appeal Error No. 4

THE APPEALS COURT OPINION HOLDS THAT A RENTED POST OFFICE BOX IS A RESIDENCE FOR VENUE JURISDICTION PURPOSES UNDER CALIFORNIA REVENUE AND TAXATION CODE SECTION 19407

> "...representative Koris' investigative report listed two residence addresses for defendant, the one on Gordon Valley Road and the Solano County Post office box." Opinion, p. 5, Appendix, p. 8.

This act constitutes error on the part of the Appeals Court and violates petitioner's right to due process under the United States constitution, Amendment 5 and Amendment XIV.

The court anchors its decision on two California cases which have absolutely nothing to do with felony criminal venue jurisdiction and the mandate of the California Legislature in R. & T. Code, § 19407 that "The place of trial .... shall be in the county of residence or principal place of business of the defendant or defendants;..."

The Information filed against petitioner alleged violation of R. & T. Code §19406 which provides in pertinent part "Any person who ... willfully fails to file any return ... with intent to evade a tax ... is

punishable ...in the state prison ... at the discretion of the court. [5]

The first case relied upon in error is Whittell v. Franchise Tax Board 231 Cal.App.2d 278. (1964)

In Whittell (supra) a husband and wife filed a civil suit in the California courts claiming that they were not subject to the State of California income tax. The California Court of Appeals held that the Whittells were residents of California for state income tax purposes within the meaning of the R. & T. Code where, during the period in question, they resided in their California home eight to nine months a year and spent only the summer months in their home in



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[5] California Penal Code, Section 16(a): A felony is a crime which is punishable with death or by imprisonment in the state prison. Every other crime or public offense is a misdemeanor except those offenses that are classified as infractions.

Nevada, in which state they claimed domicile and the husband voted. The California home was more expensively furnished and the wife maintained a San Francisco apartment, where all the husband's business and family connections, and all the parties' professional connections were in California. The couple also maintained substantial bank accounts and automobile registrations in California, where bank records showed their residence as California, and where they contributed to California charities.

In contrast to the situation of the Whittells, petitioner answered at the preliminary hearing simply that her address was in Napa County (December 13, 1990, R. T., p. 66), because her circumstances are so modest that she could not anticipate the court would assume she had more than one residence.

The second case on which the court

relies in error is Fenton v. Board of Directors, 156 Cal.App.3d 1107; [203 Cal.Rptr. 388].

In Fenton (supra), Anne L. Fenton was elected as a director to the Board of the Groveland community Services District (board). At a public hearing a majority of the board of directors concluded that Fenton did not reside within the district and voted to deny her the seat on the board. Fenton petitioned the Tuolumne County Superior Court for adjudication. The court entered judgment against her and the Appeals Court reversed the decision.

In Fenton's case the court was trying to uphold Fenton's position in elective office.

As a member of the board, Fenton was required to reside within the Community Services District (district). She owned a residence within Tuolumne County but outside

the district. She owned another residence within the district. The residence located in the district was situated in Big Oak Flat.

That area of California has such a low population density that many of the dwellings did not have an address and a majority of the inhabitants chose to have their mail delivered to a local post office box. (Fenton v. Board of Directors, 156 Cal.App.3d 1107, 1116, 1117; [203 Cal.Rptr. 388])

The board stated that Fenton could not be considered as having a domicile in the district because she listed a post office address within the district and not a home address for the residence she owned which was situated within the district. The appeals court held that the post office address was valid indication of a domicile in this instance and Fenton kept her seat.

The Appeals Court in petitioner's case uses the Fenton analogy (supra) as proof

that because petitioner rented a post office box in Solano County, the post office box itself can be considered a residence, Opinion p. 6 fn. 1/; Appendix p. 9.

R. & T. Code §17014 defines "Resident" in pertinent part:

> "(a) "Resident" includes: (1) Every individual who is in this state for other than a temporary or transitory purpose. (2) Every individual domiciled in this state who is outside the state for a temporary or transitory purpose. ... (c) Any individual who is a resident of this state continues to be a resident even though temporarily absent from the state."

California Government Code, section 244 (hereinafter section 244) sets forth rules for determining the place of residence of an individual. California courts have long held that the term "residence" as used in section 244 means "domicile." (Smith v. Smith 45 Cal.2d 235, 239 [288 p.2d 497] (1955); Lowe v. Ruhlman 67 Cal.App.2d 828 [155 P.2d 671] (1945.)

> "For example, in our codes 'residence' is used as synonymous with domicile in the following statutes: sections 243 and 244 of the Government code, *giving the basic rules generally regarded as applicable to domicile (Lowe v. Ruhlman,* 67 Cal.App.2d 828, 833 [155 P.2d 671])....." (Ibid.; third italics added.) Smith v. Smith 45 Cal.2d 235, 239

Petitioner showed the court her property tax bill proving her residence/domicile was within Napa County, April 29, 1991, R. T. p. 2; Appendix p. 17.

The trial court before trial conceded the fact that petitioner's residence was in Napa County, the proceedings before the magistrate do not show that petitioner had two dwellings. It is recorded that petitioner had an "address" and a post office box, January 22, 1991, R. T. p.66.

Petitioner neither owns nor rents real property in Solano County. She has not resided in Solano County for over six years.

The Appeals Court by its erroneous

ruling has assigned petitioner a residence in a post office box. Petitioner contends that this cannot be the intent of the California Legislature when it voted into law the provisions of R. & T. Code, §19407.

California Court of Appeal Error No. 5

THE COURT OF APPEALS ERRED WHEN IT FAILED TO ADDRESS THE ISSUE OF WHETHER PETITIONER HAS A "PRINCIPAL PLACE OF BUSINESS" UNDER REVENUE AND TAXATION CODE, SECTION 19407

The Court of Appeals erred when it failed to address the issue of whether appellant had a principal place of business within the meaning of R. & T. §19407.

The magistrate concluded that petitioner worked in Solano County and the source of her earnings was there, January 22, 1991, R. T. p. 66; April 29, 1991; R. T. pp. 4, 5; Appendix pp. 21, 22.

The trial court admits there are no decided cases in the State of California which rule upon exactly how the R. & T. Code §19407 "principal place of business" clause

affects an employee/wage earner in bringing him to trial under R. & T. Code §19406, April 29, 1991, R. T. p. 4, Appendix p. 21.

Clearly this is an issue of first impression, (California Supreme Court, Petition for Review, p. 3) and the California Appeals Court has not addressed the issue.

Petitioner believes that the United States Supreme Court has jurisdiction to rule upon the issue because petitioner believes her right to due process under the United States constitution Amendments V and XIV were violated when Solano County assumed jurisdiction over her person because she worked at Mare Island Naval Shipyard.

## PETITIONER WAS EMPLOYED ON A FEDERAL RESERVATION WHICH IS EXEMPT FROM STATE OF CALIFORNIA STATUTES

It is petitioner' position that she did not work in Solano County, but merely travelled through Solano County to reach her place of employment which was a United States

Government shipyard to wit: Mare Island Naval Shipyard (hereinafter MINSY).

Numerous courts have held that state law does not apply to federal government reservations when the state has ceded jurisdiction to the United States. People v. Mouse. 203 Cal. 782, 2665 P. 944 (1982): (Crime committed in home for Disabled Soldiers, for which U.S. had exclusive jurisdiction, found to be incapable of prosecution in state court); Consolidated Milk Producers for San Francisco v. Parker, 19 Cal.2d 815, 123 P.2d (1942): State law provided a milk producer's plan for marketing, but three sellers sold milk to Presidio in violation of plan. Court held plan could not be enforced inside Presidio, under the facts of the case.; Allen v. Industrial Accident Comm., 3 Cal.2d 214, 43 P.2d 787 (1935): Worker injured at Fort Miley, enclave subject to U.S. jurisdiction,

sought [state] Workmen's compensation benefits; same denied because the Commission had no jurisdiction on federal property; Rogers v. Squire, 157 F.2d 948 (9th Cir., 1946): Defendant convicted of rape committed at Fort Douglas in Utah sought habeas corpus on jurisdictional grounds. He argued that state reserved criminal jurisdiction over the fort in two separate cession statutes. Court found that the acts did confer jurisdiction to the U.S. and denied relief.

Petitioner asserts that Mare Island was purchased by the United States on January 4, 1853 for the sum of $83,491 from the Bissel - Aspinwall-McArthur combine, A Long Line of Ships, Arnold S. Lott, pub. 1954.

The California Legislature ceded jurisdiction to the United States on May 11, 1854, Laws of California, 1854, Chapter XLIII, p. 48.

If California has no jurisdiction on

MINSY then petitioner cannot be considered as having her "principal place of business" in Solano County.

The question remains whether petitioner, by virtue of her status as a rank-and-file employee at a naval shipyard, had any "principal place of business" within the meaning of R. & T. Code §19407 [6].

Review of state and federal tax law reveals numerous similarities between the two. Indeed, several California tax statues are expressly modeled after federal tax laws. For instance, sections 17071, 17072 and 17073 of the Revenue and Taxation Code expressly adopt the Internal Revenue Code's definitions of "gross income," "adjusted income" and "taxable income," respectively. (See 1992 edition of Revenue and Taxation code.) Similarly, Revenue and Taxation Code section



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[6]Ms. Robnett was employed as an electrician at the Mare Island Naval Shipyard (R. T. 120)

17043, subdivision (a), provides that individual taxpayers must use the same filing status which they use on their federal tax returns. (1992 ed.) Likewise, Revenue and Taxation Code section 18681.1 states that the penalties for failure to provide correct information on a state tax return are, with certain exceptions, the same as the penalties set forth in the Internal Revenue Code. (1992 ed.) Just as there are numerous Revenue and Taxation Code statutes which expressly adopt federal tax law, there are also a great many Revenue and Taxation Code statutes which bear strong similarity to the statutes in Internal Revenue Code. Inspection of the Revenue and Taxation Code reveals that immediately before section 17001, there is an eleven-page table listing hundreds of Revenue and Taxation Code statues which are analogous to various U. S. Revenue Code statutes.

Because so many of California's tax

statutes are analogous to federal tax statutes, it is now settled that, in interpreting California's tax statutes, our courts should look to analogous federal statutes and the authorities interpreting them. Calhoun v. Franchise Tax Board 20 Cal.3d 881, 884-886; (1978); Holmes v. Colgan 17 Cal.2d 426, 430; (1941); Spurgeon v. Franchise Tax Board 160 Cal.App.3d 524, 528 (1984); People v. Smith 155 Cal.App.3d 1103, 1168 (1984); Rihn v. Franchise Tax Board 131 Cal.App.2d 356, 360 (1955). Accordingly, the initial question to be answered is whether there is a federal statute analogous to Revenue and Taxation Code section 19407. As will appear, a review of federal law reveals that there is such a statute.

It is found at section 1.6091-2 of the Code of Federal Regulations (26 C.F.R. 1.6091-2). Subdivision (a)(1) of 26 C.F.R. 1-6091-2 reiterates the requirement of 26

U.S.C. 6091 that an individual's federal tax return be filed in the district wherein is located his/her residence or "principal place of business." Subdivision (a)(2) of 26 C.F.R. 1.6091-2 then provides as follows:

> An individual employed on a salary or commission basis who is not also engaged in conducting a commercial or professional enterprise for profit on his own account does not have a "principal place of business" within the meaning of this section. (1991 edition, emphasis added.)

The above statute is dispositive of the case at bar. Under subdivision (a)(2) of the above statute, a person who is a rank-and-file employee does not have a "principal place of business." Clearly Revenue and Taxation Code section 19407 was modeled after subdivision (a)(1) of this statute and after 26 U.S.C. 6091(b)(1)(A)(i). Under the authorities cited supra, at page 36, section 19407 should be interpreted in light of these federal authorities. Accordingly, a person

who is a rank-and-file employee does not have a "principal place of business" for purposes of Revenue and Taxation Code section 19407.

The uncontroverted evidence showed that petitioner was a rank-and-file employee at Mare Island-one who worked as an electrician and earned slightly in excess of $30,000 per year. (R.T. 9-10, 93; C.T. 214.)

The prosecution presented no evidence to suggest that petitioner was concurrently engaged in any private business endeavor of her own. Therefore she had no principal place of business for purposes of section 19407. The trial court's conclusion to the contrary was error and petitioner's con-conviction should be reversed.

## CONCLUSION

The magistrate at petitioner's preliminary hearing erred when he presumed that Solano County had jurisdiction over petitioner's person. The trial court erred

when it assumed jurisdiction over petitioner's person and refused to submit the venue jurisdiction issue to the trier of fact. The California Court of Appeal erred when it assumed facts not in evidence in order to maintain that petitioner's rented post office box was her residence. The Appeals Court erred again when it did not address the issue of whether petitioner had a "principal place of business" under the intent of California Revenue and Taxation Code, section 19407. The State of California Supreme Court erred when it declined to review the above abuses of petitioner's constitutional rights.

Petitioner has been denied her right to due process under the United States Constitution under Amendment V and Amendment XIV. She has been denied a trial in a district previously ascertained by law in contravention of the United States

constitution, Amendment VI.

In the interest of justice under the United States constitution, petitioner's conviction should be reversed.

Dated: FEB. 12 1993

Jacqueline M. Robnett
Petitioner In Pro Per

**DECLARATION**

I have read and understand the above Petition for Writ of Certiorari. It is true and correct to the best of my knowledge and belief. As to those portions which are hearsay, I have good reason to believe them to be true.

I make these statements under penalty of perjury.

Dated: FEB. 12 1993

Jacqueline M. Robnett
Petitioner in Pro Per
6660 Gordon Valley Rd.
Suisun, CA 94585

Phone: (707) 425-2479

# APPENDIX

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

THE PEOPLE,
Plaintiff
and Respondent,

v.

JACQUELINE MAY ROBNETT,
Defendant
and Appellant.

A055269

(Solano County
Super. Ct.
No. VC29593

Defendant Jacqueline May Robnett was convicted by a jury of two counts of willful failure to file a state income tax return. (Rev. & Tax. code, § 19406.) She was placed on three years' probation, including six months in the county jail. On appeal, she contends that the superior court erred in denying her motion to dismiss for lack of proper venue. We will affirm. -

BACKGROUND

Since defendant raises only a venue

challenge to the conviction, we need not go into the facts of the case, except to mention that defendant is a person who believes that she cannot constitutionally be required to pay state income tax. At trial, the jury rejected her defense that she held this belief in good faith and lacked willful intent to violate the law.

The case was commenced when the district attorney filed a complaint alleging two counts of felony tax evasion in Solano County Municipal Court. Attached to the complaint and incorporated therein was an investigative report from Franchise Tax Board representative Chris Koris showing that defendant had failed to file income tax returns for the years 1988 and 1989 and had completed a withholding allowance certificate (W-4 form) stating that she was exempt from filing, thereby enabling her to avoid state withholding of her wages.

At the preliminary hearing, defense counsel asked defendant if her address at 6660 Gordon Valley Road, Suisun was in the county of Solano. Defendant replied that it was actually in Napa county. She admitted, however, that she worked at the Mare Island Naval Shipyard in Solano county and that she had a post office box in Suisun City which was in Solano County. Revenue and Taxation Code Section 19407 (Section 19407) provides, in part, that the place of trial for the offenses including those charged here is "the county of residence or principal place of business of the defendant or defendants" or if neither was applicable, in Sacramento County. (Emphasis added.)

Defendant was bound over in superior court, where she brought a motion to dismiss for improper venue under Penal Code section 995 (section 995). Defendant argued that Napa County was the only proper venue under

section 19407, because it was her county of residence and she did not have a "principal place of business" within the meaning of the code section. The district attorney countered that "principal place of business" was equivalent to "place of employment" of an employee and venue was therefore proper in Solano County because defendant worked there. The court accepted the district attorney's argument and denied the motion.

APPEAL

On appeal, defendant and the Attorney General resume the debate on venue carried on between trial counsel and the district attorney on the 995 motion below: Defendant continues to maintain that venue was improper in Solano under the "principal place of business" prong of section 19407 because that phrase was only meant to apply to corporations or business entities, not individuals. She argues that federal tax law in analogous

failure-to-file situations supports her interpretation. The Attorney General, on the other hand, continues to justify Solano County as the proper venue by asserting that the workplace of a wage earner constitutes her "principal place of business" under the statute.

We will not delve into this debate because we conclude that under the applicable standard of review, there is substantial evidence in the record to support a finding that defendant maintained her residence in Solano County for purposes of section 19407.

It is important to keep in mind that defendant first raised the venue issue in superior court by moving to dismiss. Consequently, our review on appeal is confined to the propriety of the superior court's denial of defendant's section 995 motion to dismiss or set aside the information on grounds of improper venue. That

motion was made on the basis of the record before the magistrate at the preliminary hearing. On appeal from a denial of a section 995 motion, we disregard the ruling of the superior court and directly review the order of the magistrate. (People v. Prance, (1991) 226 Cal.App.3d 1525, 1530.) "[A]ll inferences favorable to the magistrate's ruling at the preliminary hearing must be drawn. [Citation.] (People v. Martinez (1970) 3 Cal.App.3d 886, 889.)

The magistrate at the preliminary hearing must be deemed to have concluded that proper venue for the prosecution lay in Solano County. (People v. Mitten (1974) 37 Cal.App.3d 879, 881.) Venue is a question of fact, and ruling on that question the magistrate was required to pass on the weight of the evidence and the credibility of witnesses. On subsequent consideration neither this court nor the superior court is permitted to

substitute its judgment for that of the magistrate. Where there is "some evidence" to support the magistrate's factual determination of venue we will not inquire into its sufficiency. (Id., at p. 881-882.)

Defendant concedes that under section 19407 venue was proper in the county of her residence. "While a person can have in law only one domicile, [citation] he may have several 'residences' for different purposes [citation] as well as more than one "residence' for tax purposes [citation]. (Whittell v. Franchise Tax Board (1964) 231 Cal.App.2d 278, 284.)

The only evidence that defendant's "residence" was not in Solano County was her response on cross-examination that her "address" on Gordon Valley Road was "actually" in Napa County. Defendant never stated that this "address" meant her place of abode; she also testified that she had a post

office box in Suisun City, which she admitted was located in Solano County. There was a substantial body of evidence in the magistrate's file supporting the inference that defendant's "residence" for tax purposes was in Solano County: representative Koris' investigative report listed two residence addresses for defendant, the one on Gordon Valley Road and the Solano County post office box. In 1990, shortly before the commencement of this prosecution, the Franchise Tax Board corresponded with defendant through her post office box address. Defendant also sent tax protest correspondence to the Board in 1984 - 1985 from an address in Solano County, including numerous affidavits which were notarized there. Defendant's W-2 statements for the tax years in question listed her address at the Solano County post office box. Finally, on the declaration of exemption form, which defendant signed and filed with

the Employment Development Department to avoid state withholding of her wages, she listed the Solano post office box as her address.

From the foregoing there was substantial evidence to support a factual finding by the magistrate that, at least for tax purposes, defendant's residence address was her post office box in Solano County. The magistrate's implied determination that venue was proper in Solano County for purposes of section 19407 must therefore be upheld.



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We reject the notion that a post office box cannot qualify as a person's residence address. In Fenton v. Board of Directors 156 Cal.App.3d 1107, the Court of Appeal upheld the trial court's finding, in considering the totality of circumstances, that a community service district director's post office box address was in fact "the equivalent of a residence address." (Id., at pp. 1116.) Stated the court: "It is common practice in rural areas for post office boxes to be the only address a person has. Further there may be other circumstances in which a person obtains a post office box either for business purposes or for other personal reasons. In light of the fact that appellant has failed to cite any authority precluding the trial court from reaching the conclusion it did, and the fact that a post office box address is common in rural areas, it appears that whether or not a post office box address is the equivalent of a residence address is a question of fact reserved for the trier of fact."

Regardless of its reasoning, the superior court acted properly in denying defendant's section 995 motion based on improper venue.

**DISPOSITION**

The judgment is affirmed.

_____
Smith, J.

We concur:

_____
Kline, P.J.

_____
Benson, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE FIRST APPELLATE DISTRICT

DIVISION: 2

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
ROBNETT, JACQUELINE MAY
A055269 Old No. SEE CASE
Solano County No. C29593

BY THE COURT:

The petition for rehearing is denied.

FILED Sept 15, 1992

Court of Appeal - First
App. Dist.

RON D. BARROW

Dated: SEP 15, 1992

KLINE P.J.

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

**IN BANK**

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THE PEOPLE, Respondent

v.

JACQUELINE MAY ROBNETT, Appellant

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SUPREME COURT
FILED

November 19, 1992

Appellant's petition for review DENIED

GEORGE

Acting Chief Justice

**IMMEDIATE RELIEF REQUESTED**
**PETITIONER'S TRIAL DATE SET FOR**
**AUGUST 12, 1991**

**IN THE SUPREME COURT OF THE STATE OF CALIFORNIA**

JACQUELINE M. ROBNETT,

Petitioner,

v.

Court of Appeal
No. A053523

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF SOLANO,

(Solano County Superior Court
No. SCR 29593V

Respondent,

THE PEOPLE OF THE STATE OF CALIFORNIA,

Real Party in Interest.

---

**Petition for Writ of Prohibition from the Superior Court of Solano County**

**The Honorable James F. Moelk, Judge**

(EXCERPT OF PETITION)

Article III, section 2 of the United States constitution requires that criminal trials 'shall be held in the State where the said crimes shall have been committed,' a

safeguard reinforced by the command of the Sixth Amendment that the criminal trial shall be before an impartial jury of 'the State and district wherein the crime shall have been committed.', Travis v. United States, 364 U.S. 631, 634 (1960)", Defendant's Petition For Review of Petition For Writ Of Prohibition, p. 7.

"The right petitioner seeks to assert herein is an important federal constitutional right, arising under the Sixth and Fourteenth Amendments, to a trial by a jury drawn from residents of the county (or, in common law parlance, the "vicinage") in which the crime was committed or the omission was required to be performed. People v. Bradford 17 Cal.3d 8, 15-17 (1976); People v. Bismillah 208 Cal.Ap.3d 80. (1989)

"In People v. Bradford, supra. 17 Cal.3d at pp. 15-16, this court stated that "[o]ur venue statutes must be construed in light of

the importance historically attached to vicinage. At common law, a defendant in a criminal action had a right to be tried by a jury drawn from the vicinage, i.e., the neighborhood, in which the alleged crime occurred. (People v. Powell 87 Cal. 348, 354-355 (1891). The substance of this common law right is preserved in the federal constitution, the Sixth and Fourteenth Amendments guaranteeing a defendant in a state criminal prosecution a right to be tried by a jury drawn from, and comprising a representative cross-section of, the residents of the judicial district in which the crime was committed. (People v. Jones 9 Cal.3d 546, 556 (1973)"

Defendant's Petition For Review of Petition For Writ Of Prohibition, p. 9

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SOLANO

HONORABLE JAMES F. MOELK, PRESIDING

The People Of The State
Of California,
Plaintiff,

vs. No. C29593

Jacqueline M. Robnett,

Defendant.

---

**REPORTER'S TRANSCRIPT OF PROCEEDINGS**

**MONDAY, APRIL 29, 1991**

**MOTION TO SET ASIDE**

The following proceedings were had and taken, to wit:

THE COURT: Now, Ms. Lynch?

MS. LYNCH: Yes, Your Honor, if we could call the Robnett Case?

THE COURT: All right. Number two on the calendar, Robnett. Okay. These matters are on for a motion to set aside and further proceedings. I've read and considered the motions --

MS. LYNCH: I'm sorry, Your Honor--

THE COURT: -- and the response. Anything further to add that you haven't included in your written documents?

MS. LYNCH: Yes, there is one other thing, if I may approach Your Honor. I showed this to the district Attorney.

In my points and authorities, I indicated that I will be submitting the map or the documentation which we'd ask the Court to take judicial notice. I'm handing to the Court a county tax bill, property bill which indicates it's Napa County at the residence address of my client, and I'd ask the court to take judicial notice that my client does, in fact, reside in Napa County.

THE COURT: Well, I can't take judicial notice of it. I can accept the stipulation, or you can offer this into evidence if there's no objection to it.

MR. SHERRER: I don't -- I'm not willing to stipulate, and I'm not, -- I don't believe there's been a proper foundation laid for that to go into evidence.

MS. LYNCH: Well, I can have my client testify, Your Honor. I think that the testimony already at the preliminary hearing is that --

THE COURT: Well, wait a minute. At 995 hearings, do we take evidence?

MR. SHERRER: No. No.

THE COURT: I don't think so. I think we go on the evidence that's in the record before the court. So I'll return this document back to you and --

MS. LYNCH: That's fine, Your Honor. I think the record establishes already that my client is a resident of Napa County. This was offered only as corroboration of her testimony at the preliminary hearing indicating that she, in fact, resides in Napa

County. So I'll submit it. Insofar as that issue, I'll submit it.

THE COURT: Well, just say what you have to say and I'll listen to all of it at this time.

MS. LYNCH: With regard to the motion to dismiss, one thing I discussed with Mr. Daugherty on the phone Friday is the fact that further corroboration of the way I've attempted to interpret the statute is the fact that the statute also provides that if an individual does not have a residence or a place of business within the particular county, that the county of Sacramento is the proper place for trial. And I think that that supports the fact that, for individual defendants, the proper place for trial is the place of residence, not their place of employment.

And the reason for that is because, if an individual does not reside in California

but works in California, then it would be proper; only in that event to have California be the proper place of jurisdiction.

THE COURT: I've read that argument. That's exactly what you say in your moving papers.

MS LYNCH: No, but one thing I did not say in my moving papers is the reference in the statute to Sacramento being the proper place of trial if an individual does not have a place of business or a residence.

My point being that if an individual works, for example, in Napa County but does not live in the State of California, then the argument would be then Sacramento is the proper place.

And I think that that's further indicative of the fact that an employment location is not the same as primary place of business.

THE COURT: Okay. Anything else:

MS. LYNCH" No, I'd submit it.

THE COURT: Mr. Sherrer?

MR. SHERRER: Your Honor, the defendant claims a residence or at least an address in -- within the county, that being a post office box in Suisun. She claims as her place of employment is Mare Island. Clearly venue is proper in this county. Submitted.

THE COURT: Well, I don't know if it's clearly proper because there are really no cases that interpret place of business as meaning whether or not it is a place of employment, the place where a person earns their money, or whether a person has established a business location. And I think that's what counsel is arguing for the defense.

By the same token, it doesn't seem reasonable from my point of view, and when we're dealing with venue, and venue has to mean something. Usually there has to be a

basis in which venue attaches: convenience of witnesses, situs of the crime, and in this case location of earnings. The earnings are in Solano County clearly.

I interpret the statute to mean that place of business also means an individual workman's place of established work. It is clear that that is her established place of work.

Therefore, I find that venue is proper in the county, and the motion to dismiss is denied.

Okay.

MS. LYNCH: Your Honor, I would ask the court, since I've been appointed in this case, to authorize my office to file a writ. We're seeking review of this issue since there are no published cases, and it would be my position that it would be a necessary expense as well as an unnecessary burden on my client to have to go to trial --

THE COURT: Isn't that the same writ that's already gone up?

MS. LYNCH: No, the writ that's gone up was filed by my client regarding the issues of the constitutionality and provisions -- it was done without any assistance. I did not request the expansion of an appointment to do that writ.

THE COURT: Well, counsel, you have been appointed. You're authorized to do what you think is necessary to represent your client. I'm not going to piecemeal authorize anything. If you think that's the avenue you need to proceed in, then go ahead and do it. so let's -- that will be up to you, however.

Okay. You have a trial date now set for the 20th. That trial date will be confirmed.

Anything else to take up? I don't think you need any other readiness conferences, do you?

MS LYNCH: I think that we do, Your

Honor, only because I was speaking with the District Attorney, and depending on the outcome of this hearing, we were going to get together and see if we could stipulate to several items of evidence that Ms. Robnett would like to present.

THE COURT: But you can present that to the trial court, can't you?

MS. LYNCH: Yeah, the problem being that if we cannot agree on all of this evidence, that I may have to do a discovery motion, and also I may have to seek a continuance of the trial date.

And another problem that's arisen is that my client's contemplating withdrawing her jury trial waiver and requesting a jury trial.

THE COURT: Well --

MS. LYNCH: So I think that having --

THE COURT: You've got time to do that, but you better do it all quickly, and I wouldn't

sit back and wait for stipulations to be forthcoming. If you think you have to file a discovery motion, file a discovery motion.

MS. LYNCH: Okay. so we won't set another court date then?

THE COURT: No, you can just calendar your motions, you know, in a timely fashion so they can be heard before the time of the trial.

MS. LYNCH: Thank you.

THE COURT: All right.

(whereupon the matter was adjourned)

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SOLANO

Honorable Michael L. McInnis, Presiding

(Tuesday, August 13, page 141):

(The following proceedings were held outside the presence of the jury.)

THE COURT: Okay. The jury has left the courtroom.

MS. LYNCH: Thank you, your Honor. At this time, I would make a motion for a directed verdict in this case based on the Prosecution's inability to establish by a preponderance of the evidence that this court has jurisdiction over this matter pursuant to Revenue and Taxation Code Section 19407 as well as the Federal constitution Regarding place and venue.

And I would state the evidence has shown that Ms. Robnett is a resident of the County of Napa; she's an employee in the County of Solano. Even assuming -- notwithstanding

Federal Constitution, 19407 requires that the place of trial be either the place of residence of a defendant of the primary -- the county of the primary place of business of a defendant or, if neither exist, then the County of Sacramento.

And I would submit to the Court that no reasonable jury could find, based on the testimony deduced at this trial, that any of the foregoing requirements have been met.

Specifically with regard to the principal place of business, I would submit to the court and ask the court to interpret by reference into this record my points and authorities set forth in my 995 motion that principal place of business cannot be interpreted to be my client's place of employment.

THE COURT: Thank you. Are you prepared to respond?

MR. DAUGHERTY: Your Honor, the Statute provides for alternate forms of venue. The

Defendant's earnings here were clearly in Solano County. She was employed at Mare Island Naval Shipyard. The evidence indicates that Mare Island Naval Shipyard is in the City of Vallejo, Solano County, California. That is her place of business. That is where she works. That is where she earns her money.

Venue is properly under 19407 of the Revenue and Taxation codes. This issue was brought forward many times in the past and it has always been resolved in favor of finding venue to be properly situated here in this county.

MS. LYNCH: Just in quick response, your Honor, we have had numerous discussions off the record between the District Attorney, myself and your Honor regarding the fact that I have provided to the court authority indicating that venue is a question of fact for the jury to determine.

And I have cited the case of People v. McClattery (sic) 40 Cal.App. 3rd 748 (1940). And all of our scholarly minds put together, we have been unable to find any indication to the contrary.

And I would submit, as we have discussed off the record, that I would be asking the jury -- for the jury instruction in this regard. And because it is a question of fact, I am asking the Court for a directed verdict based on the rational that no reasonable jury could find that venue has been established, so that the case does not need to proceed to the jury.

THE COURT: Submitted?

MS. LYNCH: Submitted.

THE COURT: Thank you. Do I understand that there's been a shepherdization of 19407 and we don't have any administrative rulings or Appellate Court rulings defining principal place of business of a defendant?

MS. LYNCH: That's absolutely correct, your Honor. I, myself, personally have shepherdized it. I understand Chris Koris [employee of the State of California Franchise Tax Board who requested the Information be filed against petitioner in Solano County] has also and hasn't been able to find any Franchise Tax Board decision.

THE COURT: Speak for yourself.

MS. LYNCH: speaking, of course, for myself.

THE COURT: You haven't been able to find any?

MR. DAUGHERTY: As of this past April when we were in the process of preparing the 995 motion, I shepherdized it and I couldn't find anything at the time. I haven't checked since then to see if any decisions have come out, but if they have, I'm unaware of any.

MS. LYNCH: I'll indicate to the Court that I have.

THE COURT: Thank you. Well, I have reviewed the 995 motion and I have reviewed the People's response. And the motion for a directed verdict is denied.

After reviewing the documentation, your -- and the arguments, I think it's a little -- to me -- one might more clearly think it out -- the fact that, when I work for someone and I'm paid on a commission basis -- this is one thought process, at least -- and so I go to my place of employment and I'm in business there and I earn my income there and I'm in business there because I get my wage there and my wage is in the form of a commission, the fact that I go someplace and it's not a commission, but I get a salary, I don't think would make a difference. And therefor, I deny the motion.

Now, having made that ruling, can we discuss instructions?

MS. LYNCH: Yeah, I need instructions on

primary place of business.

THE COURT: Maybe -- can we go off the record for a few moments?

MS LYNCH: Sure, no problem.

(Whereupon a discussion is held off the recorD.)

(excerpt ends at page 144)

(Wednesday, August 14, 1991, page 151, l. 10)

(The following proceedings [on formulating jury instructions ] were held outside the presence of the jury.)

So now we turn to the issue of venue. As I understand it, it is the contention of Defense Counsel that the -- that there's a factual question that should be put to the jury on the issue of venue, true?

MS. LYNCH: True.

THE COURT: And the Court has had the opportunity to reflect upon this issue. And as I understand the evidence, there is no dispute or issue of fact relating to the

residence of the Defendant, to wit, Napa County, and there's no factual issue as to where she worked, to wit, Mare Island, Solano County.

That being the case, it's my conclusion that it's a legal question as to whether or not where you work is -- complies with the venue requirements of the code Where it is stated -- where are the words again? I don't have them in front of me.

MS. LYNCH: Primary place of business.

THE COURT: The primary place of business --

MS. LYNCH: I'm sorry, principal place of business.

THE COURT: Principal place of business of the Defendant. And this Court has, as did Judge Moelk, he denied the 995 motion, I have denied your motion made before this court.

And I suggest that it's a legal conclusion that place of work, as I have

articulated I think as late as yesterday, is the -- quote/unquote, "is the principal place of business of the Defendant." Aren't those the magic words?

MR. DAUGHERTY: Right.

THE COURT: So who wants to comment on that position of the court?

MS. LYNCH: I think that under People v. McClattery (sic) which I've already cited to the Court, that venue, in question of fact -- and although the Court is correct that there is no question of Fact -- no dispute in the status of the evidence as to where my client lived, there was evidence that she was a Federal employee.

She happens to go to work at Mare Island, which happens to be in the county of Solano. But even notwithstanding what the Court has considered to be a legal question, I feel there is still a factual question as to whether, in fact, her principal place of

business is in Solano County or if she even has a principal place of business.

And I think that that is a subject that should be addressed to the jury and that the jury should have an opportunity to consider. And in support of that argument, I would indicate to the court that, when I had made my motion for a judgment of acquittal or directed verdict, that we had much discussion off the record as to what was the meaning of principal place of business and that the Court indicated that --

THE COURT: If you will, please, what was said off the record?

MS. LYNCH: No. I'm saying on the record.

THE COURT: Okay.

MS. LYNCH: On the record, the court indicated that that would be a question for the jury, that it was a close question that the Court would let the jury decide the

issue, that the jury could have the case and decide that issue.

THE COURT: You mean that was yesterday?

MS. LYNCH: Right. On the record.

THE COURT: I think that that probably was true. We were struggling with the problem and the issues, true.

MS. LYNCH: And I continue to believe that this is a question for the jury to decide. And I'll submit it.

MR. DAUGHERTY: I believe the Court is correct, your Honor. After doing a little more looking into it since yesterday, I took a look at Black's Law Dictionary. And their definition of "place of business," they define it as the location as where one carries on his business or employment.

And I also looked at where the definition came from in the Tax Code and it came from the personal income tax chapters. I don't think it is a disputed issue here.

Yes, the Defendant lives in Napa County, but the Defendant is employed at Mare Island Naval Shipyard, which is in Solano County. There is where she gains her income. That's her principal place of business.

THE COURT: Yeah.

MS LYNCH: Another question, too, Your Honor, does the Federal Government have a place of business? Really she is employed by the Federal Government.

THE COURT: Uh-huh.

MS. LYNCH: That's her place of employment, is the Federal Government. As a Federal employee, whether she's civil or otherwise, doesn't mean that she has to go to work in Solano County every day. They could transfer her to any place at any time.

THE COURT: But just for the moment, to help clarify the record -- anything on the record, is that I think you would have a problem -- a factual issue to put to some

fact finder if there was dispute factually as to where the residence was or if there was a dispute where she works -- where she was employed. I think that, in a case where this is a risk, I know there's been that kind of a problem. Here we don't have that kind of a problem. So that's the ruling of the Court.

And is there something else that we need to discuss?

MS. LYNCH: I think not.

MR. DAUGHERTY: I don't think so.

THE COURT: Okay. Fine. Thank you. We'll get started in a few moments.

[end of excerpt - page 155]